

MUDEJARS IN THE CRIMINAL LAWS OF THE *FURS DE VALÈNCIA* UNDER JAUME I

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The great body of Roman law, with all its wisdoms and wiles, followed at the heels of King Jaume's army in its southern trek to wrest Valencia from Islam. The Valencian reconquest, part of the great Christian onslaught of the thirteenth century upon al-Andalus which included such dramatic episodes as the battle of Las Navas and the taking of Seville, witnessed a transformation of the victor's society. Jaume was faced with the problem of governing a vast new realm filled with an alien culture while trying to maintain control over an increasingly rebellious barony. The Valencian kingdom, comparable in size and shape to the crusader kingdom in the Levant, was overwhelmingly Islamic in population and character with a fragile fabric of Christian institutions laid atop it. One of the most important elements of this transformation was the growing influence of Roman law upon both Jaume's Christian and Muslim subjects. Like so much of medieval Spanish history, the topic presents a *tabula rasa* to the historian; and owing to the size of that table, we shall examine in this essay only one aspect of the overall development: namely the code of criminal law established in the newly-conquered kingdom by the man who conquered it (1).

From the moment he gained his victory, Jaume intended to create in his new realm a political entity unique to the western Mediterranean: a state under

(1) For good general discussions, see the introduction to the new edition of the code, still in progress: GERMÀ COLON and ARCADÍ GARCIA, ed., *Furs de València* (Barcelona 1970) 1. 7-92 including bibliography; RAFAEL GIBERT, *Historia general del derecho español* (Granada 1968); JESÚS LALINDE ABADÍA, *Derecho histórico español* (Barcelona 1974); ROBERT I. BURNS, S. J., *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*, 2 vols. (Cambridge Mass. 1967) ch. 14; and VICENTE BOIX y RICARTE, *Historia dels país valenciano*, 6 vols. (Barcelona 1980) 1.205-227. Until the new edition of the *Furs* is completed, we shall have to continue to use the older Latin edition of the code: MANUEL DUALDE SERRANO, ed., *Fori antiqui Valentiae*, CSIC Escuela de Estudios Medievales, textos 22 (Madrid-Valencia 1950-1967).

the direct rule of a sovereign on the firm basis of Roman legal and political tradition. Within a few years of the conquest Jaume was able to issue a comprehensive law code for the realm, which he promulgated in 1240 in a Latin text and soon after had translated, in an expanded form, into Catalan. With the exception of the short-lived legal corpus of the Hohenstaufen emperor Frederick II, the *Fori antiqui Valentiae* represents the first complete Roman law code issued and generally applied by a reigning monarch in the west since the rediscovery of Justinian's text.

The *Fori* (Catalan *Furs de València*), unlike the famed *Siete Partidas* of Castile's Alfonso X, were not a broadly conceived or even carefully designed collection of laws; they were, rather, a makeshift conglomeration of statutes based upon Roman principles. Three generations of scholars have debated the original territoriality of the code: that is to say, whether Jaume intended the code for all Christian subjects of Valencia or whether he issued it solely as a local code for Valencia city and environs (2). The king himself, after he had issued the *Furs*, formally swore to uphold the code for all the Christian subjects in the kingdom, and further obliged all his successors «to swear and confirm» the laws and «to observe them and never oppose them at any point» (3). Whatever his intentions may have been, it is certain that the *de facto* jurisdiction of the *Furs* initially extended no further than the city walls of the capital. So great was the Christian opposition to Jaume's Romanization of the law that, in his desperate need for settlers in the new land, the king was forced to permit dozens of towns to follow their traditional customs brought down from the north, or else to adopt one of the less-restrictive codes of other cities (4).

The history of Jaume's Muslim subjects provides a contrast. In ordinary cases, whether criminal or civil, the Valencian *mudéjars* continued their Islamic tradition and kept their Sunna law (5). An act of Jaume's reconfirmed the

(2) S. CEBRIÁN IBOR, «Los fueros de Valencia», *III Congreso de historia de la Corona de Aragón* (Barcelona 1908-1913) 1.605-665; MIGUEL GUAL CAMARENA, «Contribución al estudio de la territorialidad de los fueros de Valencia», *Estudios de edad media de la Corona de Aragón* 3 (1947-1948) 262-289.

(3) Arch. Crown, Jaume I, Reg. Canc. 11, fols. 202 verso-203: «Et ideo per nos et nostros volumus et concedimus vobis, universis et singulis hominibus habitatoribus civitatis Valentie et totius regni Valentie presentibus et futuris, in perpetuum quod, prout nos iuravimus et confirmamus dictos foros et consuetudines, semper de cetero successores nostri teneantur iurare et confirmare ipsos foros et consuetudines ac tenere perpetuo et observare et numquam in aliquo contravenire...»

(4) In the year 1240 for example (the very year in which the embryonic code was compiled and issued), no less than sixteen Valencian towns followed the old customary law code of Zaragoza, while another sixteen obeyed the *Furs* of Lerida, and at least one town lived under Islamic law. After the 1247 Muslim revolt, so many Catalans displaced the Moors in Valencia that the capital city itself temporarily adopted the *Usatges* of Barcelona. Although the Valencian *Furs* did slowly gain acceptance throughout the rest of the century (and by 1300 no less than sixty-one cities were governed by the code), resistance remained especially strong in the rural districts. Also by 1300, approximately thirty-four towns and villages had adopted the *fueros* of Zaragoza, two had chosen general Aragonese codes, thirteen yet lived under Islamic law, and at least three had chosen the *Usatges* of Barcelona. GUAL CAMARENA, «Contribución» (see n. 2 above) 256; JERÓNIMO ZURITA, *Anales de la Corona de Aragón*, ed. Ángel Canellas López (Zaragoza 1967 ff.) 2.95.

(5) Émile Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, sec. ed. (Leiden 1960), 567-568 and 600-603; cf. FRANCISCO A. ROCA TRAVERS, «Un siglo de vida mudéjar en la Valencia medieval (1238-1338)», *Estudios de edad media de la Corona de Aragón* 5 (1952) 115-208 at 181-186.

mudéjars' right to maintain their traditions of criminal law and justice (6); and a document of his son Pere's reign recalled Jaume's decree that «in all criminal cases [the *mudéjars*] cannot be called before a Christian judge, but rather shall be judged for their crimes according to their Sunna law and they shall be cited by Saracen judges» (7). Ironically, Islamic tradition in regard to criminal justice—in which the ruler (either directly or through one of his agents, usually the *qāḍī*) served as both lawmaker and judge—facilitated Jaume's attempt to implant Roman law in Valencia. The administrative structure for *mudéjar* criminal justice complemented and paralleled the Roman law system that the king was slowly establishing for his Christian subjects. Comparable to the Christian *justiciero* was the Muslim *qāḍī* as chief legal officer in each city district or *al-jama*; the *sobrejuntero* was roughly paralleled by the *amīn* or *muḥtasib* as chief peace officer and sometime prosecutor; and the municipally elected civic inspectors had their Islamic partners in the *muḥtasib* (8).

Certain towns enjoyed even greater autonomy for their *mudéjar* citizens. The *mudéjar* charter of Chivert—which is dated 28 April 1234 and is the most lengthy and detailed of the Valencian charters—granted Muslims the right to have and administer their own jail (9). A 1273 Valencia city statute provided for separate prisons for Jews and Muslims (a separate prison for Christian criminals had long been established, so that the capital city henceforth had complete division of prison jurisdiction) (10). Immediately after the conquest, and for the first twenty years of colonial rule, the king's *justiciero* had criminal jurisdiction over the Muslims of Cocentaina. On the twentieth anniversary of the crusade, however, the king transferred this jurisdiction to the royal bailiff with the strict injunction that the bailiff should judge all criminal cases according to Sunna law; moreover, the king guaranteed the *qāḍī* of Cocentaina jurisdiction over all civil cases (11). Likewise the 1252 municipal charter of Játiva—the city whose superb paper mills made possible the documentary explosion of Jaume's reign—granted all criminal jurisdiction to the Muslim

(6) Arch. Crown, Jaume I, Reg. Canc. 12, fol. 147 verso.

(7) *Ibid.*, Pere III, Reg. Canc. 50, fol. 124; «cuiusdam privilegii quod dominus Iacobus felicitis recordationis pater noster concessit sarracenis omnibus regni sui videlicet quod in causis criminalibus non possint coram christiano iudice preveniri sed quod pro suis culpis secundum suas zonas iudicentur tantum ac quod preveniantur a iudicibus sarracenis».

(8) ROBERT I. BURNS, S. J., «Societies in Symbiosis: The Mudejar-Crusader Experiment in Thirteenth-Century Mediterranean Spain», *International Historical Review* 2 (1980) 349-385 at 359-360 and notes.

(9) Carta puebla de Chivert, in «Colección de cartas pueblas», no. 76, *Boletín de la sociedad castellonense de cultura* 24 (1948) 226-230: «insuper habeant dicti mauri carcerem in suo arravallo in quo malefactores debitores et alii homines distringantur».

(10) JOSÉ RODRIGO y PERTEGÁS, «La morería de Valencia: ensayo de descripción topográfico-histórica de la misma», *Boletín de la real academia de la historia* 86 (1925) 229-251 at 243; ROCA TRAVERS, «Un siglo de vida mudéjar» (see n. 5 above) 135-136; ROBERT I. BURNS, S. J., *Islam under the Crusaders: Colonial Survival in the Thirteenth-Century Kingdom of Valencia* (Princeton 1973) 260.

(11) Arch. Crown, Jaume I, Reg. Canc. 13, fol. 236: «Concedimus vobis universis et singulis sarracenis ravalli Concentaine presentibus et futuris in perpetuum quod de cetero non teneamini de aliquibus in posse iustitie nostre Cocentaine respondere sed in posse illius qui baiulus noster Cocentaine fuerit. Ita quod ipse audiat et determinet omnes causas criminales, que inter vos fuerint secundum aḡunam vestram, et ille sarracenus qui cadit vester fuerit audiat omnes causas civiles que inter vos fuerint et eas determinet secundum aḡunam vestram».

aljama with the usual exception of capital cases; but here again, in the instances of capital crime, the king's bailiff administered the trial according to Sunna law (12).

On occasion these usually-parallel administrative grids intersected; as a rule this happened only in capital cases or in serious crimes which crossed ethnic lines. Jaume repeatedly affirmed the policy that non-capital criminal cases which involved only Muslims were to be turned over to the *amīn* of the respective urban quarter (*morerfa*) (13). The idea of juridical independence for the *mudéjars* did not rest easily upon the minds of the king's Christian subjects and officials; these men frequently sought to disrupt the *mudéjar* criminal justice system by attempting to appropriate jurisdiction in certain cases or even by physically intimidating or attacking Muslim officials. Thus we see the king interposing his bailiff as protector of Muslim defendants illegally seized by Christian officials (14); other instances show the king ordering one of his leading Valencian knights to refrain from attacks on the person and property of the *qa'īd* of Tárbenā and commanding all Christian officials south of the Júcar river to grant protection to two other Muslims notables (15).

Given the virtual autonomy of the Muslims to govern their own judicial affairs, it is not surprising that the great majority of the documents in Jaume's registers dealing with criminal matters pertains exclusively to Christian criminal defendants and their Christian victims. Nevertheless, a number of criminal cases involving *mudéjars* reached the king's courts and the royal registers; all of these cases exemplify and illustrate the policies described above in Jaume's decrees and the charters of Játiva, Chivert and Cocentaina.

One such capital case arose in 1279 when Ḥasan b. Sulaym was convicted of murdering another free Muslim. The *aljama* court in Picasent sentenced Ḥasan to death, according to Islamic law, but the case was automatically appealed to the royal court since it involved capital punishment. The king—as mindful as ever of financial concerns in addition to justice—commuted the sentence to slavery and ordered the royal agent Simon of Arnet to oversee the selling of Ḥasan into bondage (16). At other times the royal court overthrew convictions handed down by the Muslim judges. A pitiable case of ac-

(12) Carta puebla de Játiva, in *Colección de documentos inéditos para la historia de España*, 118 vols. (Madrid 1842-1896) 18.62; also in *Colección diplomática de Jaime I el Conquistador*, ed. Ambrosio Huici Miranda (Valencia 1916-1922; currently being reedited by M. D. CABANES PECOURT as *Documentos de Jaime I* (Valencia 1976 ff.), doc. 412; see also Arch. Crown, Jaume I, Reg. Canc. 13, fol. 236.

(13) Arch. Crown, Jaume I, Reg. Canc. 15, fol. 18 verso: «ab alamino eiusdem morerie».

(14) *Ibid.*, Pere III, Reg. Canc. 46, fol. 182; ROCA TRAVERS «Un siglo de vida mudéjar» (see n. 5 above) docs. 13, 16 and 22.

(15) *Ibid.*, Jaume I, Reg. Canc. 10, fol. 109 verso: «Mandamus vobis firmiter quatenus non faciatis impedimentum aliquod vel contrarium alcaido de Tarbena nec aliquibus bonis suis»; and again on the same folio: «... fidelibus suis baiulis, alcaidis, iusticiis ac universis aliis officialibus et subditis nostri regni Valentie a rivo Xuchari ultra... mandamus vobis quatenus in vestra custodia et comanda bestiari alcaidi Mafumet et Almafudini alcaidi de Planes, et non permittatis in dicto ganato sive bestiario ab aliquibus personis molestiam aliquam fieri vel contrarium in aliquo loco...»

(16) *Ibid.*, Pere III, Reg. Canc. 42, fol. 191.

cidental murder —manslaughter, technically— came to the king's attention in 1273. One Aḥmad, Muslim slave of Berengar Andreu, was absolved «from every criminal and civil penalty» for the unintentional murder of Sa'īd, another slave to the same Berengar; testimony given «by worthy men» had proved to the king's satisfaction that poor Sa'īd's death resulted from an accident during a friendly game (startling to modern tastes) of catch played with javelins. The javelin, when once caught by Sa'īd, had passed through his hand and pierced his throat (17).

At other times the king's mercy took other, and less admirable, paths. In 1258 Jaume absolved the Christian Joan Sanç of all criminal penalties and civil suits resulting from the case «of Ibn Gamer... whom you wickedly murdered some time ago». Joan Sanç's guilt in the murder of the *mudéjar* slave was not questioned; the king simply found it to be politically and economically expedient, for whatever specific reasons now lost to us, to waive the penalty and to confirm Joan's Valencian properties and possessions (18). The king's action appears even more suspect in a later document: Joan Sanç's co-defendant in the murder was al-Mubārak al-Ma'dānī, the *muqqadam* of the Jewish community at Alcira. Al-Mubārak was, like Joan, found guilty of murdering Ibn Gamer, but unlike Joan he was hanged for the crime and his properties were confiscated (19).

In the wild frontier society of crusader Valencia, the *mudéjars* were especially susceptible to kidnapping and being sold into slavery. The Christian barons and merchants held no monopoly on the profits of the slave-trade, though they did comprise the majority of the practitioners; but their frequent partners and clients were indeed other Muslims. Bartomeu Sellart of Burriana purchased a Muslim woman and her young child, in 1259, from pirates who had kidnapped the pair at sea; he then sold them in turn to the *qa'īd* of Tárbenā at a price of three hundred and fifty Valencian *sous*. But the mother and child had been «under the king's peace», so Jaume directed his lieutenant to force Bartomeu (presumably on penalty of imprisonment or fine) to remit the money to the *qa'īd* (20). On another occasion Jaume directed the vicar of Barcelona

(17) *Ibid.*, Jaume I, Reg. Canc. 20, fol. 332 verso; «noveritis nos absolvisse Azmet sarracenum Berengarii Andree civis Valencie parochie Sancte Katherine ab omni... pena civili et criminali quam... facere vel imponere possemus ratione mortis de Zehit sarraceno Berengarii vicini Valencie de qua idem Azmet exstiterat inculpatus, pro eo quod invenimus per homines fidedigno quod non interfecit eum scienter sed ictu fortuito cum uno dardo quando cum aliis sarracenis ipsum iactando, et quod dictus Azmet iactavit dictum dardum, et dictus Zehit (sic) illud recipere in manu antequam venisset ad terram... et dardus predictus dedit ei per gulam et interfecit eundem».

(18) The Valencian *furs* did not provide for any statute of limitations in criminal penalties, and so Jaume's decision to dismiss the sentence could not have been based on the idea that the murder had occurred «some time ago». See Arch. Crown, Jaume I, Reg. Canc. 10, fol. 62 verso: «absolvimus et definimus tibi Iohanni Sancii... omnem actionem et demandam ac penam civilem et criminalem quam et quas nos contra te habemus et habere possumus aut tibi infligere ratione Avingamerro sarraceni nostri quem oīem nequiter occidistis...».

(19) *Ibid.*, fol. 66 bis recto and verso. Al-Mubārak's widow had to bid at public auction to regain her husband's possessions.

(20) *Ibid.*, fol. 108 verso: «mandamus vobis quatenus, visis presentibus, compellatis Bartholomeum Çelart de Burriana et bona sua ad restituendum alcaido de Tarbena illos CCC^oL solidos regaliū, quos ab eo habuit et recepit pro quadam Sarracena nomine Faton et quodam Sarraceno filio suo nomine Azmet.

to seek out «a certain Saracen of Tárbenā named Ḥassān», who had likewise been kidnapped at sea while under the king's peace, and to set him free of his captors (21). We learn nothing from the document about the intended fate of the kidnappers and slave-merchants.

In these cases the crime was kidnapping —and specifically kidnapping others while under the protection of the king's peace— not slavery. Jaume's Valencian *Furs* recognized slavery as a legal practice; he sought only to regulate the institution by forbidding Jews or Muslims to have Christian slaves. «No Jew or Saracen ought to purchase a Christian slave, nor hold one by donation or any other manner» (22). The king indirectly sanctioned the trade in slavery by such steps as his 1257 action dismissing «every penalty in perpetuity» which might apply to Lord Carròs of Rebollet for his complicity in his nephew's slave transactions in the region of Denia (23). Nevertheless, Jaume took pity on many slaves —as in the murder trial of Aḥmad mentioned above— and tried to curb abuses and regulate the slave-trade. Thus a measure of 1263 granted in perpetuity «to you Abū Ja'far Ḥamid, son of the deceased Abū Sa'īd b. Hudhayl» an extensive territory comprised of the city and tower of Polop, the tower of Altea and all neighboring buildings, villages and farmlands as a tax-free estate. In addition to the generous grant, Jaume guaranteed Abū «that if any Muslim slave should take flight from any land and should arrive in (your) said castle or on (your) said land, then he cannot be removed; rather (the slave) shall be freed and absolved from his captivity and be able to come and go through the whole land of my realm, remaining safe and secure» (24).

Sexual crimes involved a complex ethic. The rape of a Christian woman by a Jew or Muslim brought a penalty of death by fire. The standard punishment for a Christian man who raped a Jewish or Muslim woman, however, was a fine (25). Cases of infra-group sexual violence were adjudicated according to the corresponding Jewish or Muslim traditional law. It is interesting

Que Sarracena et filius suus erant de palia; et ipse Bartholomeus emerat ipsam Sarracenam et filium suum, prout intelleximus, a quibusdam qui ipsos furati fuerant in mari...» The fate of the two victims is unknown.

- (21) *Ibid.*, fol. 109: «mandamus vobis quatenus ubicumque... lator presencium ostenderit vobis quendam Sarracenum de Tárbenā nomine Aḡen, qui fuit furatus in mari prout intelleximus tempore pacis et treuge, tradatis ipsum eidem et tradi ac restitui faciatis, libere et sine aliquo impedimento».
- (22) *Furs* (see n. 1 above) lib. I, rubric 8.1-3. Under this same rubric are statutes forbidding free Jews and Muslims to work in their public workshop on Christian religious holidays.
- (23) Arch. Crown, Jaume I, Reg. Canc. 9, fol. 39 verso: «remittimus, absolvimus et definimus vobis... et vestris in perpetuum omnem penam quam incurristis, et omnem questionem et demandam quam contra vos et bona vestra movere aut facere possemus, racione quorundam Sarracenorum de Denia quos vos... vendidistis».
- (24) *Ibid.*, Reg. Canc. 12, fols. 118 verso-119: «Per nos et nostros damus et concedimus per hereditatem propriam, francham et liberam tibi Abulafar Hamet, filio quondam de Acet Abinhudy, et tuis in perpetuum castrum et villam de Polop... Concedimus insuper quod, si aliquis Sarracenus captivus fugam rapuerit de aliqua parte et in dicto castro venerit seu in dicta terra, nullus inde extrahi possit; sed sit semper de predicta captivitate liberatus vel solutus, et possit per totam terram dominacionis nostre deinde ire et stare atque redire salve pariter et secure».
- (25) *Fori antiqui Valentiae* (see n. 1 above) pp. 229-230. A Christian man who raped a Christian woman of lower social station was fined; the rape of a woman of equal or higher station was reconciled by marriage to the victim.

that Jaume's *Furs* considered cross-cultural adultery a crime of greater seriousness than cross-cultural rape: the penalty demanded by this crime was death by fire regardless of religion. «If any Jew or Saracen is found committing adultery with a Christian woman, they both shall be burned. And if any Christian man is found committing adultery with a Jewess, they both are to be burned; if with a Muslim woman, they (are to be beaten while) running naked thorough the city» (26). But the court could forgive even the breaking of this taboo. For a price of five thousand *sous*, for example, the king pardoned Salimah b. Shulana, a Jew from Játiva, «for having had carnal relations with the said (Maria, a convert from Judaism), and indeed you and the said convert confessed to having had intercourse with each other» (27). So violent a society could more readily pardon a crime of violence than a crime of love. The killing of Gerard Arquer by Bernat Sa Clusa in 1263 was declared a *crime passionel* by the court, and Bernat was fully pardoned «because you had found him committing adultery with your wife» (28).

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To sum up a brief discussion: Jaume's *Furs de València* was a principle tool in the king's attempt to unify Valencia politically and to elevate, via Roman concepts of governance and rulership, the royal position in his new realm. The criminal law statutes and the documents in the royal registers illustrate the difficulties faced by the king in this attempt. Forced to grant concessions to whole cities and religious-ethnic groups, and compelled to allow exceptions in return for political or economic assistance, Jaume nevertheless pressed on with his attempt to bring Romanized law into Valencia (20). Change came slowly, but it came: ordeals and purgations were gradually dispelled with, and the tedious civility of witnesses, evidence and appeals replaced the more exciting barbarisms.

In general the Valencian *mudèjars* retained their own criminal law and judicial traditions. Jaume permitted this out of necessity and on account of the complementary nature of Islamic tradition with the Roman principles of the *Furs*. The law code commanded that all Jews, in criminal cases involving Christians, had to face Christian judges and justice (30). But the overwhelming majority of Valencia's *mudèjars* required that they be granted a certain judicial autonomy. In some towns, Christian or Jewish testimony could not even be used against a Muslim defendant (in non-capital offenses only, of course) (31). With time, the parallel Islamic and Roman traditions of criminal law and justice (along with the parallel administrations which oversaw them) evolved in Valencia, but king Jaume had laid down their foundations.

(26) *Ibid.*, p. 230: «Si iudeus vel sarracenus habendo rem cum christiana inventus fuerit, comburantur ambo. Si christianus inventus fuerit habendo rem cum iudea, comburantur. Si cum sarracena, currant ambo nudi per civitatem».

(27) Arch. Crown, Jaume I, Reg. Canc. 12, fol. 24: «et fuisti inculpatus quod habueras rem cum dicta baptizata. Et eciam tu et dicta baptizata confessi fuistis rem ad invicem habuisse».

(28) *Ibid.*, fol. 32 verso: «absolvimus et definimus tibi... pro eo quia tu adulterando inveneras cum uxore tua».

(29) For another exception to the *Furs* granted by Jaume, this time in a civil case, see *Ibid*, Reg. Canc. 9, fol. 60 verso.

(30) *Furs* (see n. 1 above) lib. III, rubric 5.48.

(31) BURNS, *Islam under the Crusaders* (see n. 10 above) 265-266.